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By order,
A. GASSAWAY,
Secretary.

MINORITY REPORT

OF THE

Committee on Judicial Proceedings

ON

A BILL

Entitled an Act to provide for submitting to the Voters of the State, a proposition to

Amend Section 17, of Article 3,

OF THE

Constitution of the State of Maryland.

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MINORITY REPORT

Of the Senate Committee on Judicial Proceedings, upon the bill entitled an Act to provide for submitting to the voters of the State, a proposition to amend the seventeenth section of the third Article of the Constitution, so that the same when amended, shall read as set forth in this Act, three-fifths of all the Members elected to each of the two Houses by yeas and nays assenting thereto,

This bill proposes to so amend the Constitution of the State, so that section 17 of Article III. will read as follows:

Section 17. No Senator or Delegate after qualifiying as such, notwithstanding he may thereafter resign, shall during the whole period of time for which he was elected, be eligible to any office under the State, by appointment of the Executive or Legislature or shall during said term, receive the whole or any part of the salary or profits of any office, exercised by any other person, nor shall the Governor or any Senator or Delegate be elected by the Legislature to any office under the government of this State or of the United States, during the term for which he may have been elected or qualified, notwithstanding he shall thereafter resign his office of Governor, Senator or Delegate.

Being fully convinced, I am clearly of opinion, that the Act if passed by the General Assembly, by the requisite vote would be unconstitutional, null and void.

That the bill ought to have been reported unfavorably from the Committee on Judicial Proceedings.

The question involved in the bill having been distinctly settled, repeatedly, in the Congress of the United States.

That even were this not the case, I should object to the restrictions it proposes to place upon the citizens of this State.

Having stated my objections to the bill, I desire to refer to the authorities which have governed me in coming to a decision upon the subject.

The leading case upon the question of the right of States, to provide or superadd, qualifications or disqualifications to the office of United States Senator, other than those provisions relating thereto in the Constitution of the United States, is that of Senator Trumbull of Illinois.

On the 4th of February, 1856, the Governor of Illinois brought to the attention of the United States Senate the fact that by the Constitution of Illinois no Judge of the Supreme or Circuit Courts of the State could be eligible to any office of the State, or of the United States, during the term for which he was elected Judge, and for one year thereafter, and that Lyman Trumbull had been elected United States Senator by the Legislature of Illinois, during the term for which he had been elected as a Judge of the Supreme Court of that State; having been so elected June 7, 1852, for the term of nine years, (Congressional Globe, volume 38, of 1855-6, part 1, page 343.)

The subject was referred to the Committee on the Judiciary.

Mr. Seward said, "I desire to know whether there is any necessity for referring this document, or whether in any part of the House any such opinion is entertained, as that any State of this Union has power to fix or define by its Constitution the qualifications for Senators in the Congress of the United States."

He then cited the case of Nathaniel P. Tallmadge, a member of the State Senate of New York, who was elected United States Senator, while he held his office as State Senator, the Constitution of New York at that time disqualifying a member of the Legislature from holding any office in the gift of the Legislature during the time for which he was elected, and notwithstanding this, served his full term as United States Senator, and said, "Upon this subject I suppose there is an entire agreement of opinion everywhere, that the Constitution of the United States is the Supreme Law in regard to United States Senators."

Messrs. A. P. Butler, of South Carolina, Toucey, of Connecticut, John J. Crittenden, Stephen A. Douglas, Lewis Cass, W. P. Fessenden, James Alfred Pearce, of Maryland, and other eminent men then in the Senate, all pronounced the clause in the Constitution of Illinois as invalid and utterly void.

On March 3, 1856, Hon. John J. Crittenden, of Kentucky, called up his Resolution submitted by him on the 27th of February, as follows:

"*Resolved*, That Lyman Trumbull is entitled to a seat in this body as a Senator, elected by the Legislature of the State

of Illinois for the term of six years from the 4th of March, 1855." During the course of his argument Mr. Crittenden said: "Every man of the requisite age, if he has been a citizen for nine years, and is an inhabitant of a State, is eligible to the Senate of the United States from that State. Out of this broad circle the Legislature were told to make their own selection: that is the constitutional principle, and the constitutional rule by which the Senate exists, and there is no other. The Constitution of the United States has described what the qualifications of a Senator should be, and not only a want of them is to be applied to the party, but the election is to be opposed, or vacated, and the *State* is to add its list of disqualifications. Is that principle sustainable?" "If the provisions of the Constitution of the State of Illinois receives a construction, which brings it into conflict with the Constitution of the United States, it seems to me it cannot be much of a question to-day, that the Constitution of Illinois, and every provision of it, made by the authority of a State, must be declared to be, so far as the conflict extends, *null* and *void* when opposed to the Constitution of the United States."

If the Senate shall be of opinion, either that the case does not come within the Constitution of the State of Illinois, or that the Constitution of Illinois does come in conflict with the Constitution of the United States, and is to that extent null and void, and that it was not competent for the State Constitution to superadd any qualifications or disqualifications to those prescribed in the Constitution of the United States, either on the one ground or the other, it is clear that this Resolution ought to be adopted." (Ibid, page 549.)

"Judge Story, in his commentaries on the Constitution, treats on this very subject, and he says "The States have no power whatever to add any qualifications to those required by the Constitution of the United States." Story (on the Constitution, § 625.) They have a mere agency to elect according to the rule prescribed by the Constitution of the United States."

"Their agency is to select a man with the qualifications required by the Constitution of the United States. So it is clear the subject is considered by Judge Kent in his commentaries on the Constitution; so it is equally clear that Mr. Madison, in the numbers of "*The Federalist*," which he wrote on these branches of the Constitution, explaining them, never dreamed at that early day that such a pretension would be set up, as that a State had a right to take the qualifications of a Senator in its own hands, and to prescribe what should be the qualifications of the man who should be elected from that State."

Mr. Crittenden stated further, that John Bell held his seat

in the Senate of the United States in the face of a similar provision in the Constitution of Tennessee, to that of the Constitution of Illinois, and no one deemed it of the slightest importance.

Senator Pearce of Maryland concurred in these views and said Judge Chambers, General Howard and Governor Grason, all members of the Constitutional Convention of 1851, of Maryland, all agreed that no additional qualifications to those in the Constitution of the United States, could be required by the State for a Senator, nor could any disqualification be put upon a candidate.

(Congressional Globe, Vol. 38, part 1. 1855, '56, page 582.)

Senator Pugh of Ohio opposed the Resolution, claiming the right of the States to superadd qualifications for Senators of the United States, and cited the provisions of the Constitutions of twelve States, and said, "We sit here to decide, therefore, upon the vilidity of the Constitutions of twelve, and perhaps of sixteen States."

Upon the vote on the Resolutions of Mr. Crittenden, in effect declaring such a provision in a State Constitution void, the votes stood:

Ayes—Messrs. Adams, Allen, of Ohio, Bell, of Tennessee, Bright, Brown, Butler, of S. C., Lewis Cass, Collamer, Crittenden, Dodge, Durkee, Evans, Fessenden, Fish, Foot, Foster, Geyes, Hale, Hamlin, Harlan, Houston, R. M. T. Hunter, James Mallory, James M. Mason, James Alford Pearce, Reid, Rusk, Sebastian, W. H. Seward, Sumner, Isaac Taucey, Wade, Wilson and Yates—35.

Nays—8.

(Ibid, page 584.)

The decision in this case is a precedent which has never been set aside or in any way varied, and is conclusive upon the subject.

But there are many similar cases. It will not be disputed, I suppose, that the Congress of the United States are the Judges of the qualifications of its members, and the celebrated case I have cited settles their views.

The learned Justice Story, in his great work upon the Constitution, (Story on the Constitution, sections 624, 625, 626, 627, 628, 629,) says: "If a State Legislature has authority to pass laws to this effect, they may impose any other qualifications beyond those provided by the Constitution, however inconvenient, restrictive or even mischievous they may be to the interests of the Union," and goes on to show the uncon-

stitutionality of any laws of a State or State Constitution, superadding qualifications beyond those prescribed by the Constitution of the United States.

The propriety of electing the Governor of a State, as United States Senator has often been established and the practice is an honored one in this country, and it was never deemed otherwise than honorable for a man, upon whom the people had passed judgment of approval to aspire to the place of Senator, that such a position ought to be open not only for the ambition of the humble citizen, but to any one, notwithstanding the candidate may have proved himself, worthy the confidence of the people, and by them have been elevated to the high and honorable position of the Gubernatorial Chair, is evidenced by the fact, that many Governors have been so elected.

Mahlon Dickerson of New Jersey, was elected Governor in 1815, in 1817, was elected United States Senator, and his successor as Governor, chosen by the same Legislature.

He served sixteen yeors as United States Senator, and was honored by Jackson, with a seat in his Cabinet as Secretary of the Navy, and also similarly honored by Van Buren.

Samuel L. Southard of New Jersey, was elected Governor in 1832, and elected to the United States in 1823.

George McDuffie of South Carolina, in 1835, chosen Governor, and whilst in that office was in 1843, elected United States Senator.

John Tyler and James Barbour, were also elected to the United States Senate, whilst holding the office of Governor of Virginia.

Hannibal Hamlin, served as Governor of Maine, only ten days when elected United States Senator, was elected Governor January 7th, 1857, and on the 16th of the some month was chosen United States Senator, he resigned as Govenor February 20th, 1857, was elected Vice President in 1860, and is now in the United States Senate.

Milton S. Latham, was in January, 1860, elected Governor of California, and served only three days, when he was chosen United States Senator.

Henry S. Lane, was elected Governor of Indiana, in 1861, and twenty-one days after his inauguration was elected to the United States Senate.

Governor Yates of Illinois, was elected United States Senator during his governorship, in 1865.

Governor Lot. M. Morrill of Maine, Governor Morton of Indiana, Governor Stevenson of Kentucky, and recently Governor Booth of California, and Governor Oglesby of Il-

linois, were all elected to the United States Senate, during the period of their office of Governors.

Governor Thomas Swann, was elected United States Senator in 1867, whilst he was Governor of this State, but afterward declined the honor, not however from any doubt upon the question of the perfect legality of his election.

And at this very Session of the General Assembly, Governor Wm. Pinkney Whyte, was chosen United States Senator for the term commencing March 4th, 1875, with signal unanimity, the democratic members of the General Assembly, appreciating his admirable ability and noble qualities of statesmanship, did not even in their caucus name any other candidate for that position.

Governor Whyte, resigned to accept the office and the Hon. James B. Groome, a Member of the House of Delegates, was chosen Governor.

The operation of this bill would have prevented the Legislature from elevating one of her justly distinguished sons to that high position.

There are many instances in the history of our nation where its sons have been called from an office of honor and trust as in the case of James Munroe, in 1811, he was re-elected Governor of Virginia, which he held until appointed Secretary of State, by President Madison, and he was afterwards made President.

Daniel D. Tompkins of New York, was elected Governor in 1807, and so continued by re-election until 1816, when he was elected Vice President, with James Munroe as President, before he was 33 years of age, they both were re-elected President and Vice President.

There are also cases where a United States Senator, has been elected to the Governorship, as in the case of Silas Wright of New York, who was in the United States Senate, when in 1845, he was elected Governor.

Wm. L. Marcy, of New York, in 1829, was appointed a Justice of the Supreme Court, which he held until 1831, when he was elected United States Senator.

Thus I have shown the verdict of the nation upon the questions involved by this bill.

Would Senators repudiate the lessons of the past, and pass a measure clearly unconstitutional and void?

Besides, having the effect to put before the world our protest against the conduct of a long line of illustrious men, whose names are embalmed in the hearts of their countrymen as patriots and statesmen, and whose brilliant example is worthy of the imitation of the rising youth of America.

Again, let us examine precedents more closely connected with our own State. The famous case between Joshua Barney and William McCreery, of Maryland, before the House of Representatives, in 1807. The Legislature of the State had appointed two Representatives in Congress to the county of Baltimore, and provided that one of them should be a resident of Baltimore city, at the time of election, whilst the other should reside in the rural district.

It was disputed as a fact, whether McCreery, who had the highest number of votes, was or was not a resident of the city, and also whether the Act of the Legislature, requiring a qualification of residence, should be considered as valid or invalid.

The Committee on Elections reported in McCreery's favor, on the 9th of November, 1807, without deciding the first question, and solely on the ground that the Act of the Legislature was void.

The House finally decided McCreery was entitled to his seat.

This question has not only been viewed by the celebrated authorities to which I have referred, but in our own State. That distinguished lawyer, the Hon. Isaac D. Jones, in 1868, then the Attorney-General of the State, on the fifth of February, in response to an order of the House of Delegates, filed his opinion upon the question of validity of the election of the Hon. Wm. T. Hamilton as United States Senator, he being a resident of the Western Shore. When the law, as it stood upon the Statute Books of Maryland, specified that the person elected Senator, "after the first day of April 1867," should be an inhabitant of the "Eastern Shore," "and one of the Senators to be thereafter elected, shall always be an inhabitant of the Eastern Shore, and the other of the Western Shore of this State."

This opinion is to be found in the Journal of the House of Delegates of 1868, page 264, and is a clear and able document, abundantly fortified by authorities. The Attorney-General says: "It is clear, I think, that the State cannot insist upon the division into Senatorial Districts, as of constitutional right, and that the only sanction for the continued observance of the provision, is in the comity and good faith of the Legislature. Whatever doubt may have been originally entertained as to the question of constitutional law, has been long since dispelled on fuller consideration, and by the repeated and clear adjudications of Congress."

And decides that notwithstanding the law of the State, that the law of Congress of July 1866, chapter 245, rendered "null and void the said sections 73 and 75 of Article XXXV.

of the Maryland Code." And "doubtless the Governor will certify, as the General Assembly may request," &c.

For the reasons herein set forth, I have submitted this report.

Respectfully submitted,

FRANCIS PUTNAM STEVENS,
One of the Committee on
Judicial Proceedings.